7th and 12th September 1935 have been preserved and were put in evidence. These letters are clearly love letters, and, as at that time the plaintiff was 3 months pregnant and as I feel no doubt that the defendant was fully aware of the fact, he could hardly have written as he did unless he knew he was the father of the coming child. Then again in the postscript to the letter of the 7th September he says "I regret very much the prior appointment will prevent me having the pleasure of enjoying your sister's birthday tomorrow.". This sentence is quite inconsistent with the defendant's statement that he had not been to the plaintiff's house since the previous Christmas. It shows, on the contrary, that he was still on friendly and visiting terms.

Then again the defendant insisted in cross-examination that in December 1935 the plaintiff's father was pressing him to marry the plaintiff. This is one of the few points on which the evidence of the defendant agreed with that of the plaintiff and her witnesses. I do not think that any father would have the impertinence to press a man to marry his daughter when she was expecting a child in 3 months unless it were common ground between them that the defendant was the father. The defendant never says that he refused to marry the plaintiff on the ground that he was not the father of the child.

For these and other reasons I feel quite unable to accept the evidence of the defendant where it contradicts that of plaintiff, her father and mother. I think that he was at one time genuinely fond of the plaintiff, as she was of him, that he took advantage of her youth and inexperience, that she relied on his promise to marry her and allowed herself to be seduced. If the defendant was married at the time he made the promise then I find that the plaintiff did not know he was married having been informed by the defendant himself that the wife was dead. I also find that the defendant told the plaintiff that he was a Christian.

The plaintiff is accordingly entitled to damages. She will be entitled to the special damages claimed and amounting to $420. She will also be entitled to general damages which having regard to the status of the parties and the unfortunate position in which the plaintiff now finds herself I fix at $2,500.

*Judgment Accordingly.*

Solicitor for the Plaintiff—*A. de Mello.*

Solicitor for the Defendant—*M. Mitter.*

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[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

December 9, 1937.

## *RE* W. S. BEE AND COMPANY *EX PARTE* OFFICIAL ASSIGNEE.

[SINGAPORE BANKRUPTCIES Nos. 59 & 60 of 1937]

*Bankruptcy Ordinance (Cap. 45), s. 43, sub-s. 1(a)—Priority of Debts—Clerk's salary—Proof in bankruptcy—Merger of debt in judgment.*

A creditor of a bankrupt had sued the debtor prior to bankruptcy and obtained judgment for a sum which included a claim for salary. This would have been a preferential claim in bankruptcy under s. 43, sub-s. 1 (a) of the Bankruptcy Ordinance.

*Held*, that the fact that the creditor had sued his employer to judgment for the amount of his salary and for another sum did not prevent his proving in bankruptcy for the whole debt nor did it prevent him claiming a preferential payment of part of the whole debt.

MOTION.

*E. B. Williams*, the Official Assignee in support of the motion.

The facts and arguments appear sufficiently from the judgment.

*Cur. Ad. Vult.*

**HORNE, J.**—This is an application by the Official Assignee for directions. The creditor a former employee of the bankrupt filed a proof for $103.75 being a debt due on a judgment obtained on 10th March 1937 in a suit filed on the 6th February 1937. On examination the Official Assignee finds that $75 of this sum is salary as clerk for services rendered within the four months next before 23rd February 1937 the date of the interim receiving order, i.e. 1st November to January 31st, one month's salary in lieu of notice $25, costs $3.75.

In view of my judgment in the *Tan Lian Boh* case the Official Assignee did not adjudicate on the proof but applied for directions. The Official Assignee states in his findings that if he is to apply s. 43, sub-s. 1 the creditor will be entitled to prove preferentially for the salary and will rank as an ordinary creditor for the balance of the judgment, but as the judgment referred to states " that the doctrine of merger of a cause of action on a judgment must be recognised and followed by the Official Assignee in adjudicating on a proof " it may be " that the creditor cannot prove preferentially at all and that he must rank as an ordinary creditor for the whole of his claim on his judgment....."

He cited *Re Forte. Ex parte Schofield*, (1897) 2 Q.B. 495 which was not before the Court in the *Tan Lian Boh* case. In my opinion the *Tan Lian Boh* judgment does not affect this matter. Nor is the effect of the judgment accurately set out by the Official Assignee in his find-

ings. In that case I held that as the judgment debt and the interest thereon at 8% had to be taken as the proved debt the Official Assignee was not entitled without notice of rejection to go behind the judgment and apply s. 43, sub-s. 8 which related to interest. In that judgment I said that when a judgment is recovered the remedies for the original debt are in general merged in the judgment, though on the authority of *In re King; Ex parte Horner*, 1 Manson 505, the original remedy that of making your debtor bankrupt is still retained, if the "original debt is still unsatisfied" also that "although the Court in bankruptcy has wide powers enabling it to go behind a judgment the judgment will always stand good unless some cause is shewn for disregarding it in whole or in part."

In this case, as the creditor has shewn that a part of his judgment debt is for salary within s. 43, sub-s. 1(a), the fact, that he sued his employer to judgment for this amount and another sum, does not prevent his proving the whole judgment debt, nor does it prevent his claiming a preferential payment of a part of the whole debt. The Official Assignee would not be going behind the judgment for the benefit of creditors generally, but under s. 43, sub-s. 1 he would be dealing with the distribution of the property of the bankrupt and cannot therefore disregard a clear statutory direction as to priority of payment, if the facts shew a right to priority. Surely a statutory direction is good cause shewn for disregarding the judgment in whole or in part. Section 43, sub-s. 1 states "there shall be paid in priority to all other debts" and then sets out the preferences. All other debts must include a judgment debt. And if a creditor cannot be deprived of his priority by another's judgment is it to be said that he is to be deprived by his own judgment, which includes the amount in respect of which the Ordinance gives him a preferential payment.

"Proof of debt" and "distribution of assets" are two different and separate subjects. In practice they often have to be considered by the Official Assignee at one and the same time, which may account for his use of the expression "preferentially proved," an expression not altogether clear. But if in the proof of a debt sufficient particulars are given so as to justify preferential payment out of the assets I know of no reason how the fact that the whole of the debt is admitted can limit the creditor's right, if the facts support it, to a preferential payment of the whole or a part of the debt proved.

In the *Tan Lian Boh* case the Court was compelled to hold that as there had been after some years no notice of rejection of the debt, the debt i.e. the judgment debt carrying interest at 8% must be taken as the proved debt and consequently after proof the Official Assignee could not re-examine the proved debt and apply s. 43, sub-s. 8. The judgment does not go so far as saying that at the time of proof the Official Assignee could not have looked behind the judgment. It could not, however, be said on the documents, and in the lapse of time that he had done so. Certainly there was no notice of rejection. What the judgment decides is that there the debt has been proved and an underpayment has been made in the dividend in respect of the proved debt, the person underpaid cannot come in, years out of time, and recover the underpayment. *Re Fort*, (*Supra*) is a case of postponement of a creditor, who had obtained a judgment for an amount advanced to a trader, on terms of sharing the profits of a trade. By the Partnership Act, s. 3, such a creditor, whether he has obtained a judgment or not, is not entitled in bankruptcy to receive anything in respect of the loan until the claims of the other creditors have been satisfied. The reason for s.3 are sufficiently obvious and I need say no more, except that a statutory direction as to priority of payment of a debt is of equal force to a statutory direction of postponement of payment. In the case of *Re Forte* the proof was rejected on the ground that Schofield the creditor was not entitled to prove in competition with other creditors. This rejection is upheld by the Court of Appeal. Though no doubt if assets were available, (they seldom are in practice) he could have proved at a later stage. The case therefore does not appear to be an authority for rejecting the present proof of the whole debt. Provided therefore that a judgment creditor as in this case claims priority, or that the fact that he is entitled to priority of payment to the whole or a part of his judgment debt emerges when he proves, he is entitled to the priority given him by statute, although his remedies have in general merged in the judgment which is still unsatisfied.

*Judgment Accordingly.*

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**END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.**